

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

SAMUEL TURNER POOLE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 99-635-JJF
	)	
STAN TAYLOR, and	)	
RAPHAEL WILLIAMS,	)	Jury Trial Demanded
	)	
	)	
Defendants.	)	

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GREGORY HUBBARD et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 00-531-SLR
	)	
STAN TAYLOR,	)	
RAPHAEL WILLIAMS and	)	
M. JANE BRADY	)	
	)	
Defendants.	)	

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**MOTION TO CONSOLIDATE**

COME NOW defendants, by and through undersigned counsel, Deputy Attorney General Richard Hubbard, and move for a consolidation of two lawsuits pursuant to Rule 42(a) of the Federal Rules of Civil Procedure. In furtherance of their motion, defendants represent as follows:

1. Samuel Turner Poole (“Plaintiff”) is a former inmate who was

incarcerated at the Howard R. Young Correctional Institution (formerly Multi-Purpose Criminal Justice Facility or “Gander Hill”) in Wilmington, Delaware during the relevant period giving rise to his Complaint. The plaintiff is presently incarcerated in the Commonwealth of Pennsylvania.

2. In September, 1999 the plaintiff filed the instant action pursuant to 42 U.S.C. §1983 with leave to proceed *in forma pauperis* in the United States District Court for the District of Delaware alleging Eighth Amendment violations regarding conditions of confinement. (D.I.#2). Plaintiff’s Complaint was dismissed as frivolous pursuant to 28 U.S.C. §§1915(e)(2)(B) - 1915A (b)(1) on or about January 3, 2002. (D.I.##21,22).

3. On January 18, 2002, the plaintiff filed a Notice of Appeal to the Third Circuit Court of Appeals. (D.I.#24). *Poole v. Taylor, et al.*, C.A.No. 02-1385. The Third Circuit ordered that the District Court’s Order entered on January 4, 2002, be vacated and the matter remanded for further proceedings. *See* 2003 WL 22319222 (3d Cir.).

4. On November 4, 2003, by Order of the Court, service of process was issued upon defendants. (D.I.#39). On February 6, 2004, the defendants filed an Answer. (D.I.#49). On September 28, 2004, the Court ordered defendants to file a brief in support of their affirmative defenses on or before October 12, 2004. (D.I.#54).

5. On or about October 12, 2004, defendants filed a motion to stay the proceedings in this action until a precedential decision had been rendered in the case of *Gregory Hubbard et al., v. Stan Taylor et al.*, C.A.No.03-2372, in the Third Circuit (C.A. No.00-531-SLR in this Court) based on Eighth Amendment conditions of confinement violations. On or about February 23, 2005, the Third Circuit rendered its decision reversing and remanding the case. Additionally, Appellees’ petition for en banc

rehearing was denied on or about April 1, 2005.

6. There are approximately 40 inmate plaintiffs in the *Hubbard* action, and are being represented by Paul E. Crawford, Esq., and Helena C. Rychlicki of Connolly, Bove, Lodge & Hutz. The *Hubbard* case, in which plaintiffs have sought class certification for pre-trial detainees and inmates at the Howard R. Young Correctional Institution involves the same time period 1998-2001, as well as the same issues; overcrowding and inadequate medical access/treatment as in the *Poole* case. Additionally, Poole has just filed his third motion for appointment of counsel; his first two motions having been denied by this court. In consolidating these two cases, Poole joins a class with whom he shares the same issues and moreover, he will be provided with legal representation which thus far has alluded him.

7. Rule 42(a) of the Federal Rules of Civil Procedure provides that “[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the actions; it may order all of the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” *Bernardi v. City of Scranton*, 101 F.R.D. 411, 413 (M.D. Pa. 1993). A decision to consolidate is a matter for the discretion of the trial court. *Id.* When determining whether to order consolidation, the trial court must balance the probable savings of time and effort against the likelihood that a party might be prejudiced, inconvenienced or put to extra expense. *Rohm & Haas Co. v. Mobil Oil Corp.*, 525 F. Supp. 1298, 1309 (D. Del. 1981).

8. Defendants respectfully request that the two Complaints be consolidated as the two lawsuits involve common questions of law and fact satisfying Fed.R.Civ. P. 42. Furthermore, defendants assert judicial economy is well served by having the matters consolidated as it will preclude having the Court and the State engage in duplicative litigation.

WHEREFORE, defendants respectfully request this Honorable Court consolidate the matters of *Samuel Turner Poole v. Stan Taylor ,Raphael Williams*, C.A.No.99-635-JJF and *Gregory Hubbard et al., v. Stan Taylor, Raphael Williams and M. Jane Brady* C.A. No. 00-531-SLR.

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

/s/ Richard W. Hubbard  
Richard W. Hubbard, I.D#2442  
Deputy Attorney General  
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Dated: April 19, 2005

Attorney for Defendants

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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RAPHAEL WILLIAMS and	)	
M. JANE BRADY	)	
	)	
Defendants.	)	

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**ORDER**

**IT IS HEREBY ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2005, that defendants' Motion to Consolidate the following cases: *Samuel Turner Poole v. Stan Taylor, Raphael Williams*, C.A.No.99-635-JJF and *Gregory Hubbard et al., v. Stan Taylor, Raphael Williams and M. Jane Brady*, C.A. No.00-531-SLR is hereby **GRANTED**.

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Judge

**CERTIFICATE OF MAILING AND/OR DELIVERY**

The undersigned certifies that on April 19, 2005 he caused the foregoing *Defendants' Motion to Consolidate* to be delivered to the following persons in the form and manner indicated.

**NAME AND ADDRESS OF RECIPIENT(S):**

Samuel Poole, Inmate  
BN-5599  
P.O. Box 1000  
Houtzdale, Pa  
16698-1000  
(By First Class Mail)

Paul E. Crawford, Esq.,  
Helena C. Rychlicki  
Connolly, Bove, Lodge and Hutz  
1007 North Orange Street  
P.O. Box 2207  
Wilmington, De 19899  
(E-File)

**MANNER OF DELIVERY:**

- ☐ One true copy by facsimile transmission to each recipient
- ☒ Two true copies by first class mail to plaintiff postage prepaid
- ☐ Two true copies by Federal Express
- ☐ Two true copies by hand delivery to each recipient

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